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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/885,519 | 06/20/2001 | Kenichi Ariga | P/3281-8 | 3354 |
| 32172 | 7590 | 02/06/2006 | EXAMINER | |
| DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP 1177 AVENUE OF THE AMERICAS (6TH AVENUE) 41 ST FL. NEW YORK, NY 10036-2714 | | | SHINGLES, KRISTIE D | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2141 | |

DATE MAILED: 02/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|-------------------------------|--------------------------------|--|
| Office Action Summary | Application No. 09/885,519 | Applicant(s) ARIGA, KENICHI | |
| | Examiner Kristie Shingles | Art Unit 2141 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5,7 and 9-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5,7 and 9-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

*Applicant has amended claims 1 and 9.
Claims 6, 8 and 14 are cancelled.*

Claims 1-5, 7, 9-13 are pending.

Response to Arguments

1. Applicant's arguments filed 12/8/2005 have been fully considered but they are not persuasive.

A. **Regarding Claims 1 and 9**, Applicant argues with reference to cited prior art, *Kenner et al* (US 6,269,394) that *Kenner et al* teach load balancing relating to the bandwidth required to accommodated predicted downloads as opposed to teaching that load is the occupation ration of the CPU of the server (see Remarks page 8).

A.1. Examiner respectfully disagrees. *Kenner et al* teach that when an SRU has a load approaching a threshold limit of its theoretical capacity then the load is distributed to a least-loaded SRU, wherein the purpose of performing dynamic load balancing is to prevent any particular SRU from becoming a bottleneck (col.31 lines 40-67 and col.32 lines 10-30). *Kenner et al* clearly explains the use of load balancing to remedy the overloading of the SRU relative to its threshold capacity. It is well-known that bottlenecks overload CPU processes at the server, therefore off-loading the server when its load reaches a threshold limit is to preserve the optimal processing performance of the server's CPU functioning at a particular rate. Furthermore, the load of a server is determined by its threshold capacity for efficiently processing and servicing requests, which satisfy the claimed limitation, defining load as the occupation ratio of processing

of a CPU of the server. Applicant's arguments are therefore non-persuasive and the rejection is maintained.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 1, 3, 7 and 9** are rejected under 35 U.S.C. 103(a) as being unpatentable over *Herz et al* (USPN 6,571,279) and *Kenner et al* (USPN 6,269,394) in view of *Treyz et al* (USPN 6,587,835).

a. **Per claim 1**, *Herz et al* teach a regional information distribution system for use in distributing regional information to consumers through a communication network, said system comprising:

- an information input terminal for making advertising data designating regions where said advertising data are distributed (Abstract, col.4 lines 6-24 and col.5 lines 35-61; distribution and delivery advertising system based on location via input terminals);
- a concentrated management server which is connected with said information input terminal through said communication network and which manages said advertising data (col.5 lines 14-34 and col.7 line 54-col.8 line 36; pseudo proxy server and display-controlling server broadcast or multicast information to the display units); and
- a regional distribution server which is connected with said concentrated management server through said communication network and which is integrated with a radio base station located per each region where said advertising data are distributed and which distributes said advertising data to a handy terminal existing

within the area of said radio base station (col.15 line 39-col.16 line 48, col.17 line 55-col.18 line 67 and col.19 line 59-col.20 line 16; pseudo proxy server is in communication with the SDI server where advertising data is distributed based on the profiles and rules of user terminals).

Yet *Herz et al* fail to distinctly teach use of a support server for distributing said advertising data in place of said regional distribution server, when load, the occupation ratio of processing of a CPU of said regional distribution server, exceed a predetermined level. However, *Kenner et al* disclose the use of dynamic load balancing among the servers for reducing and distributing the processing workload on the servers (Abstract, col.30 lines 40-51 and col.31 line 40-col.32 line 30). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of *Herz et al* and *Kenner et al* for the purpose of distribution of the processing load on server by implementing a load balancing scheme; because it would prevent the servers from being overloaded and provide additional servers for backup and/or balancing. Load balancing is a common and well-known convention used in the art for distributing the processing and retrieval duties across multiple devices to aid in quicker turn-around in response times, latency reduction, and failover support.

Herz et al and *Kenner et al* fail to explicitly teach that said handy terminal having an information filter function for determining favorable conditions of said advertising data for an owner of said handy terminal. However, *Treyz et al* teaches the handheld computing device having filtering capabilities in order to filter commercial and advertisement messages based on their content (col.44 lines 20-28 and 38-44, col.45 lines 40-51, col.47 lines 30-53, col.54 line 32-col.55 line 22). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of *Herz et al* and *Kenner et al* with *Treyz et al* for the purpose of permitting the handheld device to maintain filtering capabilities for filtering data

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based on the user's preferences and profiles. This is useful to functionality of the system, wherein at least a portion of the user's filtering data is maintained locally in the device to reduce the amount of time and information need in retrieving user data from remote servers.

b. **Claim 9** contains limitations that are substantially equivalent claim 1 and is therefore rejected under the same basis.

c. **Per claim 3**, *Herz et al* and *Kenner et al* teach a regional information distribution system as claimed in claim 1, wherein said information input terminal is located in a shop which requests distribution of said advertising data (col.19 lines 19-67, col.25 lines 26-55 and col.26 line 29-col.27 line 34).

d. **Per claim 7**, *Herz et al*, *Kenner et al* and *Treyz et al* teach a regional information distribution system as claimed in claim 1, *Treyz et al* further teach the system wherein said regional distribution server distributes only a part of said advertising data to said handy terminal; said part of said advertising data complying with said favorable conditions determined by said information filter function (Abstract, col.30 lines 40-51 and col.31 line 40-col.32 line 30).

4. **Claims 2, 4, 5 and 10-13** are rejected under 35 U.S.C. 103(a) as being unpatentable over *Herz et al*, *Kenner et al* and *Treyz et al* and further in view of *Park* (USPN 5,627,549).

a. **Per claim 2**, *Herz et al*, *Kenner et al* and *Treyz et al* teach the system of claim 1 as applied above, yet fail to distinctly teach a regional information distribution system as claimed in claim 1, wherein date, time, and period for distributing said advertising data are added to said advertising data. However, *Park* discloses a distribution system that incorporates time-stamps with the advertising data records (col.7 line 59-col.8 line 12).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of *Herz et al*, *Kenner et al* and *Treyz et al* with *Park* in order to provide time-stamp information with the advertising data for the purpose of informing the user of the time the data was displayed and for archiving purposes. One skilled in the art would have been motivated to generate the claimed invention with a reasonable expectation of success.

b. **Claim 10** is substantially equivalent to claim 2 and is therefore rejected under the same basis.

c. **Claims 4 and 11** contain limitations substantially equivalent to claim 3 and are therefore rejected under the same basis.

d. **Per claim 5**, *Herz et al*, *Kenner et al* and *Treyz et al* with *Park* teach a regional information distribution system as claimed in claim 4, *Herz et al* further teach the system wherein information of position of said shop is linked to said regional distribution server (col.19 lines 35-67).

e. **Claim 12** is substantially equivalent to claim 5 and is therefore rejected under the same basis.

f. **Claim 13** is substantially equivalent to claim 7 and is therefore rejected under the same basis.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: *Chern et al* (USPN 6,381,465) and *Reilly et al* (USPN 5,740,549).

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6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristie Shingles whose telephone number is 571-272-3888. The examiner can normally be reached on Monday-Friday 8:30-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on 571-272-3880. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kristie Shingles
Examiner
Art Unit 2141

kds


RUPAL DHARIA
SUPERVISORY PATENT EXAMINER